



WEB COPY



CMA.No.550 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.08.2024

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

C.M.A.No.550 of 2023 and
C.M.P.No.4712 of 2023

The Divisional Manager,
United India Insurance Company Limited
P.B. No.172, 261, J.N. Street,
Puducherry 01

... Appellant

VS.

1. Veerappan
2. Vijayan
Respondents

...

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Award dated 30.10.2019 in M.C.O.P.No.918/2012 on the file of the Additional Motor Accident Claims Tribunal (FAC), Presiding Officer, Puducherry.

For Appellant : Mr.MJ. Vijayaraaghavan
For R1 : Mr. T. Ananthasekar
R2 : No appearance.

J U D G M E N T

The appellant, the United India Insurance Company Limited
filed the present appeal questioning the quantum of compensation



CMA.No.550 of 2023

awarded by the Tribunal in M.A.C.T.O.P.No.918/2012 on the file of the Presiding Officer, Additional Motor Accident Claims Tribunal (FAC), Puducherry.

2. The first respondent filed a claim petition in M.A.C.T.O.P.No.918/2012 under Section 166(1) (a) of the Motor Vehicles Act before the Motor Accident Claims Tribunal (FAC), Puducherry, seeking compensation of Rs.6,00,000/- for the injuries sustained by him in a road accident that took place on 14.01.2011.

3. The case of the claimant is that on 14.01.2011, he was walking along ECR Road and at about 8.30 p.m, when he was nearing Keezhuputhupattu, Vanur, a Hero Honda Splendor motorcycle bearing Registration number PY 01 AY 2320 belonging to one Vijayan, the second respondent herein, hit him from behind as a result of which he sustained injuries all over his body. He was immediately rushed to PIMS Hospital, Puducherry.

4. According to the claimant, the accident took place due to the



CMA.No.550 of 2023

rash and negligent driving of the driver of the Hero Honda Splendor motorcycle bearing Registration number PY 01 AY 2320 and that since the said vehicle was insured with the present appellant, the United India Insurance Company Limited, the owner and the insurer are jointly and severally liable to pay compensation to him.

5. In the Tribunal, the second respondent, the owner of the motorcycle remained absent and was set *exparte*. The appellant/Insurance Company resisted the claim petition on all grounds available to the insurer under Section 170 of the Motor vehicles Act.

6. The Tribunal, after analysing the evidence on record, fastened negligence on the part of the rider of two wheeler. Since the rider was a minor and did not have a driving license, the Tribunal directed the appellant Insurance Company to pay compensation of Rs.8,48,383/- to the claimant together with interest at the rate of 7.5% per annum from the date of petition till the date of realisation in the first instance, and then recover the same from the owner of the vehicle, vide its orders dated 30.10.2019.



CMA.No.550 of 2023

WEB COPY

7. Aggrieved over the quantum of compensation awarded by the Tribunal, the present appeal is filed by the appellant / United India Insurance Company Limited.

8. Heard Mr.MJ. Vijayaraaghavan, learned counsel for the appellant and Mr. T. Ananthasekar, learned counsel for the first respondent.

9. Mr.MJ. Vijayaraaghavan, learned counsel for the appellant Insurance Company contended that the claimant was aged about 65 years at the time of accident. Though it is contended by the claimant that he was an agricultural labourer, the same has not been substantiated by him by way of adducing oral/documentary evidence. He also drew the attention of this Court to the disability certificate (Ex.C1) and contended that when the Medical Board had assessed the partial permanent disability as 57%, the Tribunal had taken it up as 60% and adopted multiplier method even though there was no functional disability. He further contended that the claimant had sustained fracture on his right femur and left ulna and a huge



CMA.No.550 of 2023

sum of Rs.1,35,000/- is awarded by the Tribunal under the head "pain and sufferings'. He therefore, prayed for scaling down the award passed by the Tribunal.

10. Per contra, Mr. T. Ananthasekar, learned counsel appearing for the first respondent/claimant contended that the Award passed by the Tribunal is based on the well laid down principles of law and therefore, the same need not be disturbed.

11. It is seen from the records that the claimant was aged about 65 years at the time of accident. No proof has been filed by the claimant to show that he was an agricultural labourer. The medical records show that the claimant has sustained injuries on his right thigh and left ulna and the Medical Board attached to Indira Gandhi Government General Hospital & Post Graduate Institute Puducherry, assessed the partial permanent disability as 57%. The accident occurred in the year 2011. Therefore, a sum of Rs.3,000/- is awarded per percentage of disability as there is no functional disability.

Partial Permanent Disability 57% x 3000 per percentage



CMA.No.550 of 2023

= Rs.1,71,000/-

According to the claimant he was earning a sum of Rs.500/- per day. In the absence of income proof, the monthly income of the claimant is fixed as Rs.9,000/-. On account of the injuries sustained by the claimant, he would have been out of action atleast for three months. Therefore a sum of Rs,27,000/- (9,000x3) is awarded towards loss of income to the claimant. The following tabular column would show the amount awarded by the Tribunal and the amount awarded by this Court under various heads.

<i>S.No</i>	<i>Heads</i>	<i>Amount awarded by Tribunal (Rs)</i>	<i>Amount awarded by this Court (Rs)</i>
1.	Pain and sufferings	1,35,000/-	50,000/-
2.	Permanent Disability	1,71,000/-	1,71,000/-
3.	Loss of earning capacity (7150x12x9x60/100)	4,63,320/-	-
4.	Medical expenses	39,063/-	39,063/-
5.	Transportation charges	10,000/-	10,000/-
6.	Extra nourishment	10,000/-	10,000/-
7.	Attender charges	10,000/-	10,000/-
8.	Loss of Amenities	10,000/-	10,000/-
9.	Loss of Income for 3 months	-	27,000/- (9,000x3)



CMA.No.550 of 2023

<i>S.No</i>	<i>Heads</i>	<i>Amount awarded by Tribunal (Rs)</i>	<i>Amount awarded by this Court (Rs)</i>
	TOTAL	8,48,383/-	3,27,063/-

11.1. The above amount would carry interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit. Since the rider of the two wheeler was a minor and did not have a driving license, the appellant shall pay the compensation amounting to Rs.3,27,063/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit, in the first instance, and then recover the same from the owner of the vehicle under the same cause of action. It is represented by the counsel for the appellant that 50% of the Award amount has already been deposited to the credit of M.A.C.T.O.P. 918/2012 on the file of the Presiding Officer, Additional Motor Accident Claims Tribunal (FAC), Puducherry. The appellant Insurance Company are at liberty to withdraw the amount deposited by them over and above the award passed by this court.

12. In the result,

I. The Civil Miscellaneous Appeal is partly allowed. No costs.



CMA.No.550 of 2023

Consequently connected miscellaneous petition is closed.

WEB COPY

II. The quantum of compensation awarded by the Tribunal is scaled down to Rs.3,27,063/- from Rs.8,48,383/-.

III. The appellant/Insurance company is directed to deposit a sum of Rs.3,27,063/- with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit, in the first instance, within a period of four weeks from the date of receipt of a copy of this order, to the credit of M.A.C.T.O.P. 918/2012 on the file of the Presiding Officer, Additional Motor Accident Claims Tribunal (FAC), Puducherry, and then recover the same from the owner of the vehicle under the same cause of action. The appellant is at liberty to withdraw the excess amount, deposited by them, over and above the compensation awarded by this court.

IV. The first respondent/claimant is at liberty to withdraw the entire award amount, after following necessary procedures.

28.08.2024

Index : Yes/No
Speaking/Non-speaking order
Neutral Citation : Yes / No
bga



WEB COPY



CMA.No.550 of 2023

R.HEMALATHA, J.

bga

To

1. Presiding Officer, Additional Motor Accident Claims Tribunal (FAC),
Puducherry .
2. The Section Officer,
VR Section, Madras High Court, Chennai.

C.M.A.No.550 of 2023 and
C.M.P.No.4712 of 2023



WEB COPY



CMA.No.550 of 2023

28.08.2024